



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0002]

RIN 1625-AA11

Regulated Navigation Area, Kill Van Kull and Newark Bay;

Bayonne, NJ, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

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SUMMARY: The United States Coast Guard proposes to establish a permanent Regulated Navigation Area (RNA) on the navigable waters of Kill Van Kull and Newark Bay surrounding the Bayonne Bridge. In response to a planned Bayonne Bridge construction project, this proposed rule would establish a speed restriction in the waters surrounding the Bayonne Bridge. Also, this proposed rule would allow the Coast Guard to prohibit vessel traffic through the RNA when necessary to safeguard people and vessels from the hazards associated with bridge construction.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket

number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202)366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Commander Myles Greenway, Waterways Management at First Coast Guard District at 617-223-8385 or email at [Myles.J.Greenway@uscg.mil](mailto:Myles.J.Greenway@uscg.mil); or call LT Hannah Eko, Waterways Management Division at Sector New York at 718-354-4114, or e-mail [hannah.o.eko@uscg.mil](mailto:hannah.o.eko@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

## Table of Acronyms

COTP NY	Captain of the Port New York
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

#### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we

can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2014-0002] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0002) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## B. Regulatory History and Information

The Port Authority of New York and New Jersey (PANYNJ) have received approval to perform construction on the Bayonne Bridge, and the Coast Guard has published certain documents in the Federal Register related to the bridge construction permit. However, this proposed rulemaking is the first regulatory action that the Coast Guard has taken related to regulating vessel traffic along the affected waterway.

There is insufficient time before the planned start of the construction project to accommodate the notice and comment

process and have a thirty day period before the effective date of the regulation. The currently planned start of the construction and the associated regulated navigation area is February 1, 2015. This date is based on a number of factors, including weather and the availability of construction equipment and other resources, and would be difficult to change. However, the Coast Guard is taking several steps to mitigate the impact of this shortened period. First, the Coast Guard has reached out to waterway users to discuss the impact of this regulated navigation area. In addition, the Coast Guard has drafted a rule designed to have minimum impact on waterway traffic. Finally, if the planned construction date remains February 1, 2015, the Coast Guard intends to continue to receive comments in the first few months of the effective period of the regulated navigation area, and may change the regulation as a result of those comments. A good cause statement, if required, will be published as part of the final rule.

### C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish Regulated Navigation Areas in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064;

and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rulemaking is to ensure the safety of vessels and workers from hazards associated with construction on the Bayonne Bridge. The current Bayonne Bridge was built in 1931 and carries the NY/NJ Route 440. PANYNJ has contracted Skanska-Koch Inc. and Kiewit Infrastructure for this project.

Construction operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, the RNA will limit vessel speed and wake of all vessels operating in the vicinity of the bridge construction zone. This will be achieved by implementing a five (5) knot speed limit and "NO WAKE" zone in the vicinity of the construction as well as providing a means to suspend all vessel traffic for emergent situations that pose imminent threat to waterway users in the area.

After consulting with PANYNJ, Skanska-Koch Inc, and Kiewit Infrastructure, the Coast Guard has determined that certain aspects of the construction project can only be completed in the channel and will require closing the waterway. For instance, barges are expected to be used at times while portions of the bridge are being raised and the barges' presence might limit maneuverability in the waterway. Also, the Coast Guard

anticipates that crane and cutting operations may create the potential for falling debris into the waterway. It is expected that the construction efforts that might require waterway closures will not take place until the fall of 2015.

#### D. Discussion of Proposed Rule

To address the aforementioned hazards, this proposed rule would establish speed and wake restrictions in the vicinity of the Bayonne Bridge. Also, this proposed rule would establish intermittent closures of the waterway along portions of Kill Van Kull and Newark Bay when necessary for the safety of vessels and workers during construction work in the channel. This proposed regulation will be effective at 8:00 a.m. on February 1, 2015. The proposed speed restrictions of five (5) knots will be in effect at all times within the RNA and all vessels must proceed through the area with caution and operate in such a manner as to produce no wake unless a higher minimum speed is necessary to maintain bare steerage. The Coast Guard will enforce waterway closures, however, only when necessary to protect people and vessels from hazards associated with bridge construction.

Whenever it is determined that a waterway closure is necessary, the Coast Guard will provide the public with as much advanced notice as possible of the closure times. Such notice will be provided via <http://homeport.uscg.mil/newyorkvia>, via Local Notice to Mariners, via Broadcast Notice to Mariners, and



via other methods described in 33 CFR 165.7.

#### E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to the rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard expects the economic impact of this proposed rule to be minimal as this proposed RNA will not necessarily prohibit vessel traffic in the affected waterways. Rather, this proposed RNA will primarily establish a speed and wake restriction along the waters surrounding the Bayonne Bridge. There may be times that the Coast Guard will prohibit vessel traffic through the RNA, but such closures are expected to take place during off peak hours. Moreover, even when the Coast Guard generally prohibits vessel traffic through the RNA,

specific vessels may still obtain permission to transit through the RNA. Additionally, the Coast Guard will provide the public with advanced notification of waterway closures so that mariners may plan accordingly. Such notifications will be made through various means, including, but not limited to, Local Notice to Mariners and at <http://homeport.uscg.mil/newyork>. For all of these reasons, the Coast Guard has determined that this proposed rulemaking would not be a significant regulatory action.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined

that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a Regulated Navigation Area and thus, is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.168 to read as follows:

§ 165.168 Regulated Navigation Area; Kill Van Kull and Newark Bay; Bayonne, NJ, NY Regulated Area.

(a) Location. The following area is a Regulated Navigation Area (RNA): all waters of Bergen Point East and West Reaches in the Kill Van Kull, and all waters of Newark Bay South Reach, bound by the following approximate positions: 40°38'51.93"N, 074°06'47.90"W; thence to 40°38'41.53"N, 074°07'18.54"W; thence to 40°38'38.20"N, 074°07'41.30"W; thence to 40°38'40.47"N,

074°08'01.61"W; thence to 40°38'34.20"N, 074°08'41.71"W; thence to 40°38'39.67"N, 074°08'51.86"W; thence to 40°38'50.20"N, 074°08'55.19"W; thence to 40°39'17.54"N, 074°08'38.20"W; thence to 40°39'19.00"N, 074°08'53.09"W; thence to 40°39'07.94"N, 074°08'59.04"W; thence to 40°38'46.87"N, 074°09'23.03"W; thence to 40°38'33.40"N, 074°09'19.87"W; thence to 40°38'24.86"N, 074°09'02.71"W; thence to 40°38'23.93"N, 074°08'52.56"W; thence to 40°38'31.40"N, 074°08'07.56"W; thence to 40°38'31.80"N, 074°07'55.66"W; thence to 40°38'30.06"N, 074°07'41.13"W; thence to 40°38'33.80"N, 074°07'14.86"W; thence to 40°38'43.93"N, 074°06'45.45"W; thence to the point of origin (NAD 83).

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) Any vessel transiting through the RNA must make a direct passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction. Movement within the RNA is subject to a "Slow-No Wake" speed limit. All vessels may not produce a wake and may not attain speeds greater than five (5) knots unless a higher minimum speed is necessary to maintain bare steerageway.

(3) There may be times that the First District Commander or the Captain of the Port (COTP) New York finds it necessary to close the RNA to vessel traffic. All closures will be limited to specific hours of the day. Mariners will be advised of all



closure dates and times via Local Notice to Mariners and Broadcast Notice to Mariners in advance of closure times. During such closures, persons and vessels may request permission to enter the RNA by contacting the COTP or the COTP's on-scene representative on VHF-16 or via phone at 718-354-4353 (Sector New York Command Center).

(4) Vessels in the RNA must comply with directions given to them by the COTP or the COTP's on-scene representative. The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; or other designated craft; or on shore and communicating with a Vessel Traffic Service New York Watchstander or vessels via VHF-FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) All other relevant regulations, including but not limited to the Rules of the Road, as codified in 33 CFR Subchapter E, Inland Navigational Rules, remain in effect within

the RNA and must be strictly followed at all times.

(c) Enforcement period. This regulation will be in place from 8:00 a.m. on February 1, 2015 until December 31, 2016. This RNA's speed restrictions are enforceable 24 hours a day as long as this RNA is in place. The Coast Guard will enforce waterway closures only when necessary to protect people and vessels from hazards associated with bridge construction.

(d) Notification. The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA. Violations of this RNA may be reported to the COTP at 718-354-4353 or on VHF-Channel 16.

Dated: December 22, 2015

L.L. Fagan  
Admiral, U.S. Coast Guard  
Commander, First Coast Guard District

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